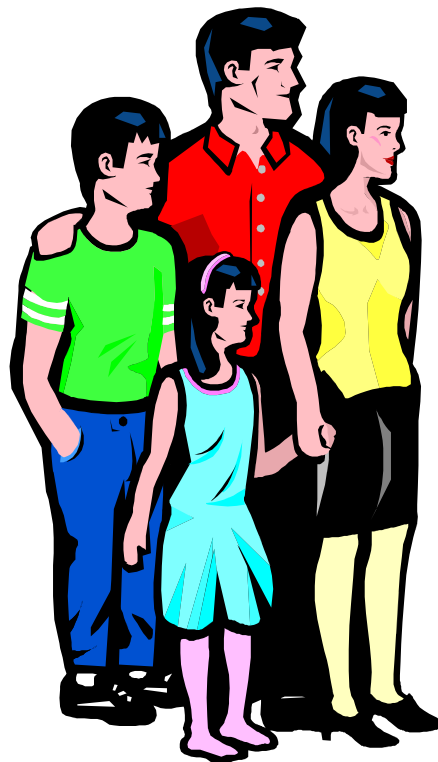


# **Application of Case Law and Constitutional Amendments to Child Welfare Work**

## **Section 5**



## Removing a child from their home

- Exigent circumstances
  - Warrant
  - Pre-removal Hearing
  - Voluntary Placement
- The child is at risk and must be removed immediately
  - A warrant is obtained based on probable cause
  - A hearing is held so the court can determine if a removal is needed
  - Parents voluntarily place their child based on dependency or other such issues

Removing a child from their home is an area that is intimately connected to the 4th and 14th Amendments. This is not a training that tells you when to perform any of these actions or to give you skills to engage in these activities. The information that we will cover can be found in Utah statute.

A child may be removed without a warrant when there are exigent circumstances. Exigent circumstances occur when a child is at imminent risk of being seriously abused or neglected if they are not taken into custody immediately; or when leaving them at home during the time it would take to get a warrant would put the child in danger. In addition to exigent circumstances, a child may be taken

into custody without a warrant if a parent refuses to take physical custody of a child or is not available and the child would otherwise be abandoned.

A warrant may be issued by a judge if a peace officer, or other person or witness testifies that there is probable cause to believe that:

1. There is a threat of substantial harm to the child's health or safety
2. It is necessary to take the child into protective custody to avoid harm
3. It is likely that the child will suffer substantial harm if the parent or guardian of the child is given notice and an opportunity to be heard before the child is taken into protective custody.

If the removal of a child is necessary to protect the child, a warrant should be obtained. Warrants offer protection for parents whose children are taken into custody to protect their safety, as well as for caseworkers.

Pre-removal hearings occur when a child needs to be removed, but can safely stay at home until a court hearing has been held. These court hearings occur in three business days. This allows Child and Family Services to pursue the protection of children while providing parents with due process.

A voluntary placement can occur when a parent is in need of assistance and voluntarily places their child in Utah's custody. Examples of situations where this may occur include:

1. a parent who is terminally ill and without other resources

2. a child who is mentally ill and a parent is unable to meet the extreme needs of the child.

There are many other reasons that a voluntary placement may be made, these are just examples of a couple.

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As an employee of Child and Family Services you know that the state has a responsibility to protect children when a parent of family refuses to, or is unable to do so. To assist in this responsibility the Legislature has identified situations under which a child may need to be removed from their home for reasons of protecting the child's health or safety. There are thirteen basic criteria for removal:

Grounds for removing a child  
from the custody of their parents

1. there is imminent danger to the physical health or safety of the child
2. a parent is engaging in or threatens a child with unreasonable conduct that causes the child to suffer emotional damage

3. a child has been physically or sexually abused
4. a parent is unwilling to have physical custody of the child
5. an infant having been abandoned
6. a parent has been incarcerated and unable to arrange care for the child
7. a substitute caregiver is unable to care for the child and the parent is unavailable
8. a child is left without provision for support
9. a child is in immediate need of medical care
10. a child's safety is threatened by an unsafe environment of by being left unattended
11. the parent is arrested for operating a clandestine drug lab in the home or on the property where the child resides
12. a child has been severely neglected
13. a child's welfare is otherwise endangered.

When children's health and safety is at risk, it is important to assess whether other children in the home are also at risk. When you have questions regarding removals you have an number of resources:

1. your supervisor
2. your AAG

3. Utah statute
  4. Child and Family Services Practice Guidelines
- 
- 
- 

Utah State statute also enumerates a number of rights that parents have.

Parent's Rights  
Utah Statute

These are contained in Utah Statute 62A-4a-201. In addition to the legal rights we have discussed, parents have the rights to **accommodations for moral and religious beliefs as well as for their family culture**

when a family member is in custody or under the jurisdiction of the court. These accommodations must be made by caseworkers, foster parents and other out of home placements. These accommodations apply to placements, treatment plans, services provided, and other activities with which professionals engage with families.

Both federal and state statutes agree that a parent possesses fundamental liberty interest in the **care, custody, and management of their children.**

Therefore, a government entity must support an action or allegation that challenges

a parent's rights with evidence. Even when a child is taken into the custody of the government entity, a parent's rights do not cease to exist. Unless a state proves a parent unfit, the child's parents share a vital interest in preserving their relationship with their children.

We know that it is in the best interests of children to be with their own families whenever that is possible. A child's need for a normal family life in a permanent home, and for a positive nurturing family relationships will usually best be met by the child's parents. Parents not only have the right and authority, but also the responsibility and obligation, to raise, manage, train, educate, provide for, and discipline their own children.

Parents not only have a right to notice of the removal of their child, to court hearings, but to other **legal considerations** as well. These things include:

1. A qualified attorney
2. Witnesses on their behalf
3. Being located if their whereabouts are unknown when their child is taken into care
4. The right to appeal

Parents are also entitled to prior notice that their child is being interviewed.

This applies if they are not the alleged perpetrator or the spouse or paramour of the

alleged perpetrator. In this case, Practice Guidelines require that the parent be notified within 24 hours of the interview, that an interview has taken place.

Families have the right to have a **Child and Family Team** that includes all of the experts that can provide the services they need to be reunited with their children. The team should also include natural supports who know them and can support them in the changes they need to create to have their children at home with them. Families have the **right to a plan** that is created with the team and that clearly identifies the changes that need to be made, what the changes will look like for the family, and who will support them in creating the changes. The Plan needs to be individualized, to be specific to the child and the child's family, rather than general in nature. The time frames, in which the family and professionals have to complete goals, needs to be included in the plan as well.

Part of the **plan will include visitation between the parent and the child**. A visit can only be denied if the parent's condition would pose a physical risk to the safety of the child, threaten the child's life or traumatize the child.

Parents have the right to **health and mental health information** about their children and to make decisions about their children's medical and mental health care. When the child is in the state's custody parents retain the residual right to make major medical, surgical and psychiatric treatment decisions.



Parents have the right to seek a second medical or mental health diagnosis from a licensed practitioner of the parent's choice if they are in disagreement with the initial diagnosis.

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Utah Statute 62A-4a-201 also lists some rights of children. The primary right of children is to be safe. They should be free from abuse and neglect, and from the threat of abuse and neglect. If a child's family poses a threat to the child's **safety** they have the right to have the state intervene to

### Children's Rights Utah Statute

temporarily provide them with safety until the risk with their family can be resolved. The primary concern should always be the child's health, safety, and welfare.

A **permanent family** is the right of every child. ASFA focuses in large part on the need for children to have permanency. Temporary foster care does not create the permanency a child needs to feel a sense of belonging and support that comes from one's own family.

Children are entitled to **support**. During an interview they may have a support person if they choose. This support person could be a teacher, school administrator or counselor; a childcare provider; family member; advocate; or a clergy member; in addition to other appropriate persons.

In addition to statute, practice guidelines and best practice say a child is entitled to support from their Caseworker, Foster Parent, and parent or guardian.

Children are entitled to the **care** of their parents. This care includes physical, emotional, medical and developmental support; as well as a **safe environment** and treatment when needed.

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There are additional fundamental rights that families have while working

## Additional Family Rights

with Child and Family Services.

**Confidentiality** is a primary obligation of caseworkers and team members. Confidentiality refers to an ethical principle where some types of communication between a person

and a professional are "privileged" and may not be discussed or divulged to third parties. It means to be trusted with secret matters.

The National Association of Social Worker Ethics code has a substantial amount of information on confidentiality. Those parts of the ethics code that pertain to confidentiality are included in your participant workbook on pages 88-91.

Key factors to be aware of are that:

1. Families are entitled to their privacy. Families should not be discussed in places where others may overhear any information that is shared.
2. Information should only be disclosed to those who can help the family and the information is released only with the family's consent or when the law requires that information be reported. Third party records

should be treated with confidentiality and only released with the consent of the parties.

3. Family records should be stored and secured so that information can be protected.

Two factors that relate to confidentiality are HIPPA and working with partners. Though child welfare is not covered by HIPPA, many of the second party documents that we receive are covered by HIPPA and we are required to respect the limitations on those documents. HIPPA, however, is overruled by investigations and when a CPS worker is investigating an allegation of abuse, they are entitled to documents covered by HIPPA when they are relevant to the investigation.

In addition we need to remember that partners need information to work effectively with us and our families. Share information when it is possible and when it is relevant

Parents should have the authority and responsibility to make **decisions** for their families and children. Parents are the legitimate source of most major decisions regarding their children's physical, social, emotional, and psychological development and well-being.

Just as we want families to provide us with complete information so that we can provide the best possible services, families need to have the **information** about

their family that we have. They are entitled to know what to expect while working with DCFS, what is expected of them, how federal and state timelines might impact them and any other information that involves them. Remember the family creed, “Nothing about us without us.”

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Celebrations are in Order. You have finished the training!!!!

Now review the quiz questions for this section. Be prepared to answer these questions when you take the quiz in the last section.

## **NASW Ethics Code Sections on Confidentiality**

### **1.07 Privacy and Confidentiality**

- (a) Social workers should respect clients' right to privacy. Social workers should not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.
- (b) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.
- (c) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person. In all instances, social workers should disclose the least amount of confidential information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.
- (d) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.
- (e) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.

- (f) When social workers provide counseling services to families, couples, or groups, social workers should seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Social workers should inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements.
- (g) Social workers should inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.
- (h) Social workers should not disclose confidential information to third-party payers unless clients have authorized such disclosure.
- (i) Social workers should not discuss confidential information in any setting unless privacy can be ensured. Social workers should not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.
- (j) Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.
- (k) Social workers should protect the confidentiality of clients when responding to requests from members of the media.
- (l) Social workers should protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients' records are stored in a secure location and



that clients' records are not available to others who are not authorized to have access.

(m) Social workers should take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible.

(n) Social workers should transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with state statutes governing records and social work licensure.

(o) Social workers should take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.

(p) Social workers should not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.

(q) Social workers should not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

(r) Social workers should protect the confidentiality of deceased clients consistent with the preceding standards.

## **2.02 Confidentiality**

Social workers should respect confidential information shared by colleagues in the course of their professional relationships and transactions. Social workers should ensure that such colleagues understand social workers' obligation to respect confidentiality and any exceptions related to it.

### **3.04 Client Records**

- (a) Social workers should take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.
- (b) Social workers should include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.
- (c) Social workers' documentation should protect clients' privacy to the extent that is possible and appropriate and should include only information that is directly relevant to the delivery of services.
- (d) Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes or relevant contracts.

## Acronym List

Here is a list of the acronyms used in this training.

AAG	Assistant Attorney General
ADC	Aid to Dependent Children
AFDC	Aid to Families with Dependent Children
ASFA	Adoption and Safe Families Act
CAPTA	Child Abuse Prevention and Treatment Act
DHEW	Department of Health, Education and Welfare
ICWA	Indian Child Welfare Act
IEPA	Inter-Ethnic Placement Act
MEPA	Multi-Ethnic Placement Act
SPCA	Society for the Prevention of Cruelty to Animals
SPCC	Society for the Prevention of Cruelty to Children
TPR	Termination of Parental Rights

### When you have completed the Training

When you have completed the last section of this training you will want to:

- ☐ Complete the Quiz
- ☐ Print out the quiz results page
- ☐ Complete the training evaluation that is at the end of your Participant Workbook
- ☐ Have your Supervisor sign the quiz results page
- ☐ Have your supervisor sign your certificate of completion
- ☐ Make a copy of your quiz and your certificate for your records
- ☐ Mail your quiz results page and your certificate to your Region Training Manager

Your Region Training Manager will record your completion of the training, sign your certificate and mail it back to you.

- ☐ If you have not heard from your Region Training Manager in two weeks, e-mail to verify that they have received your quiz and certificate and that you have received credit for the training, as well as that your certificate is on it's way back to you.

## Understanding the Background, Context and Role of the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution

1. The earliest known case of child abuse and removal resulted in the creation of:
  - a. The Society for the Prevention of Cruelty to Animals
  - b. The Child Welfare League
  - c. Orphanages
  - d. The Society for the Prevention of Cruelty to Children
2. The first major law to be passed that created and provided funding for child welfare was the \_\_\_\_\_ of 1935.
3. In 1997 the \_\_\_\_\_ was passed to address issues of permanency for children in foster care.
  - a. Multi-ethnic Placement Act
  - b. Adoption and Safe Families Act
  - c. Indian Child Welfare Act
  - d. Inter-ethnic Placement Act

4. Match the legal terms to the correct definition

Family Autonomy	Facts adequate to prove or support the cause of action
Forma Pauperis	Evidential Tier for TPR when ICWA applies
Prima facie evidence	Evidential Tier used in Administrative Hearings
Preponderance of the evidence	The state as the parent
Parens Patriae	Parents have the right to rear their children
Probable Cause	An emergency that requires immediate action
Clear and convincing evidence	Evidential Tier used In TPRs when ICWA does not apply
Exigent circumstances	Evidence needed to obtain a warrant
Beyond a reasonable doubt	Indigent

5. How are we currently fulfilling the fourth amendment in child welfare in Utah?
  - a. By holding Child and Family Team Meetings
  - b. By taking children into custody
  - c. By obtaining warrants to take children into custody
  - d. By providing parents with Child and Family Plans
6. How are we currently fulfilling the fourteenth amendment in child welfare in Utah?  
(select all that apply)
  - a. By taking children into custody when we have evidence they have been abused
  - b. By taking children into custody when we have evidence they have been neglected
  - c. By scheduling hearings within 30 days of taking custody of a child
  - d. By notifying parents of hearings after a child has been taken into care
7. The fourth amendment protects individuals from:
  - a. Unreasonable searches and seizures
  - b. Having their children taken into custody
  - c. Investigations by state agencies
  - d. Having their parental rights violated
8. The fourteenth amendment provides individuals with (select all that apply):
  - a. Due process
  - b. Protection from TPR
  - c. Formera Pauperis
  - d. Equal protection
9. Parents have the right to educate their children in Academics and Religion?  
True or False
10. The state has the right and responsibility to step into a parent's pervue of raising their children when the child's \_\_\_\_\_ is at risk?
11. When children are taken into care without a warrant, what must happen speedily  
(which answer is incorrect?):
  - a. A court hearing must be scheduled
  - b. Completion of a Casey Life Skills Assessment
  - c. Parents given notice of their rights
  - d. Parents given notice of the time and place of the court hearing
12. \_\_\_\_\_ is the standard of evidence for the termination of parental rights  
when ICWA is not involved.
13. Termination of parental rights must be based on:
  - a. Whether the parents can afford the court costs
  - b. How attached the children are to the resource family
  - c. Evidence supporting that the termination is in the best interest of the child

- d. Evidence of parental drug use
14. An investigation that proves to be groundless is a violation of a parent's rights?  
True or False
15. Reunification to incarcerated parents occurs under the following circumstances (mark all that apply):
- a. The reasons that the parent is incarcerated
  - b. The parent is incarcerated for less than 12 months
  - c. If the jail will allow the child to see the parent
  - d. When it is in the best interest of the child
16. Grounds for removing a child have been identified by the \_\_\_\_\_?
17. Match the following terms to the appropriate selection at the right
- |                       |   |
|-----------------------|---|
| Exigent circumstances | A child is at serious risk if not removed immediately |
| Warrant               | A parent places a child of their own volition         |
| Pre-removal Hearing   | Based on a probable cause                             |
| Voluntary placement   | The court determines if there is reason for a removal |
18. A child can be taken into state custody if a parent were incarcerated and had no one to care for their child?  
True or False
19. A child could be taken into custody if the parent or guardian were unwilling to take physical custody of the child?  
True or False
20. According to Utah Statute, parent's rights include (mark the incorrect answer):
- a. Accommodation for moral and religious beliefs
  - b. Accommodation for culture
  - c. Care, custody and management of their child
  - d. Legal considerations
  - e. Freedom from government intrusion
  - f. Child and Family Plan
  - g. Visitation
  - h. Health information about their child

21. According to Utah Statute, children's rights include (mark the incorrect answer):
  - a. Safety
  - b. Choosing where they will live
  - c. Support
  - d. Care and a safe environment
  - e. Stable, permanent family
22. Repeated abuse of a similar or like nature is grounds for termination of parental rights.  
True or False
23. Confidentiality is covered in the \_\_\_\_\_.
  - a. DCFS rules
  - b. NASW ethics guidelines
  - c. Practice Guidelines
  - d. Federal statute
24. Confidentiality includes both verbal and written materials.  
True or False

The results page that you need to print out looks like this:

**Application to Child Welfare rev3 - Microsoft Internet Explorer**

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites Media

Address <F:\Users\All\DCFS\Division Training\Jerna's Work\HB 21\Application to Child Welfare rev3.htm> Go Links

Google Go Bookmarks 105 blocked Check Autolink Autofill Send to Settings

**Your Score:** 25

**Maximum Score:** 33

**Accuracy:** 76%

**Number of Questions:** 23

**Number of Quiz Attempts:** 1

Next Review Quiz

Done Local intranet

Start Macromedi... 2 Novell... 3 Micro... HB 21 Applicati... untitled - Pa... 3:33 PM





**Understanding the Background, Context and Role of the 4<sup>th</sup> and 14<sup>th</sup>  
Amendments of the U.S. Constitution**

Evaluation Form

<p>I now understand more about where how child welfare laws come from</p> <p>I don't understand      1      2      3      4      I understand</p> <p>Comments:</p>
<p>I feel more confident about legal terms that apply to child welfare</p> <p>I don't feel more confident      1      2      3      4      I feel more confident</p> <p>Comments:</p>
<p>I understand the connection between the 4<sup>th</sup> and 14<sup>th</sup> amendments of the U.S. Constitution and child welfare work.</p> <p>I don't understand      1      2      3      4      I understand</p> <p>Comments:</p>
<p>Understanding the results of court decisions is helpful to me</p> <p>Not helpful      1      2      3      4      Helpful</p> <p>Comments:</p>

I understand parent and child rights

I don't understand      1      2      3      4      I understand

Comments:

On a scale of 1 to five, with 1 being very little and 5 being a great deal,  
how applicable was the web training to your job

Very little      1      2      3      4      a great deal

Comments:

On a scale of 1 to five, with 1 being never and 5 being whenever possible,  
indicate how willing you are to do other trainings on the web

Never      1      2      3      4      whenever possible

Comments:

Additional comments about this web training:

***DIVISION OF CHILD AND FAMILY SERVICES***  
***CERTIFICATE OF COMPLETION***

***THIS CERTIFIES THAT THE ABOVE NAMED PERSON HAS COMPLETED***  
***"UNDERSTANDING THE ROLE OF THE 4TH***  
***AND 14TH AMENDMENTS OF***  
***THE U.S. CONSTITUTION"***

Completed \_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Region Training Manager Signature

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